



## **THE NEW CALIFORNIA DOMESTIC PARTNERSHIP LAW (AB 205): WHAT IT MEANS FOR YOU AND YOUR FAMILY**

This document explains who can register as domestic partners, how to register, how to dissolve a partnership, and what rights, benefits, protections and responsibilities will be provided to registered domestic partners in California after **January 1, 2005**.

Starting January 1, 2005, registered domestic partners in California will be provided with most of the rights and responsibilities of married couples under California law. However, even after the new law goes into effect, registered domestic partners still will not have any of the 1,138 rights and benefits of married couples under federal law. And they also still will have less security than married couples when they travel or move outside of California.

**Major areas of change with regard to the rights and responsibilities of registered domestic partnership include:**

- Creating and dissolving registered domestic partnerships
- Community property and financial obligations
- Parental rights and responsibilities
- Public benefits
- Health care and end of life issues

### **For more information, contact:**

National Center for Lesbian Rights  
870 Market St., Ste. 370  
San Francisco, CA 94102  
415.392.6257  
[www.nclrights.org](http://www.nclrights.org)

Equality California  
415.581.0005 (Northern California Office)  
310.248.3692 (Southern California Office)  
916.554.7681 (Sacramento Office)  
[www.eqca.org](http://www.eqca.org)

## GENERAL QUESTIONS ABOUT AB 205

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### ***What is AB 205?***

A.B. 205 -- which is short for Assembly Bill 205 -- is the California Domestic Partner Rights and Responsibilities Act of 2003. This law was authored by Assemblymember Jackie Goldberg and sponsored by Equality California.

**The substantive provisions of AB 205 go into effect on January 1, 2005.** From that date forward, “[r]egistered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under [California state] law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.” Cal. Fam. Code § 297.5(a). Registered domestic partners still will be denied all of the 1,138 federal rights and responsibilities that are conferred on different-sex spouses and still will have less security than heterosexual married couples if they travel or move out of state.

### ***Which laws will be affected by AB 205?***

AB 205 will affect almost every *California* law, regulation, court rule, or court decision that confers rights or responsibilities on spouses. The primary exceptions are: (1) the means of entering and exiting registered domestic partnerships still will be different than those for entering and existing marriages; (2) registered domestic partners still will pay their state taxes as single (rather than married) people; and (3) AB 205 does not effect statutes or constitutional provisions that were enacted through the initiative process.

This publication provides a general overview of the hundreds of new rights and responsibilities that will be provided to registered domestic partners when the substantive provisions of the law go into effect on January 1, 2005. Because laws and legal procedures are subject to frequent change and differing interpretations, the NCLR cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency.

### ***Couples who should be particularly cautious before registering:***

Because the federal government does not recognize domestic partnerships, there are several classes of people who should be particularly careful before deciding to register as domestic partners. These groups include:

- binational couples (in which one of the partners is not a United States citizen and is in the United States either without documentation or on a non-immigrant visa);
- couples in which one or both of the partners are receiving benefits, such as SSI or Medi-Cal; and
- couples where one or both partners are in the military.

For couples and individuals in this situation, it is highly advisable to **consult legal counsel** as soon as possible before January 1, 2005 to determine whether or not to stay registered as domestic partners or before deciding to register as domestic partners.

## QUESTIONS ABOUT REGISTERING AS DOMESTIC PARTNERS

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### *Who is eligible to register as domestic partners?*

After January 1, 2005, the following criteria must be met to register as domestic partners:

- Both persons have a common residence;<sup>1</sup>
- Neither person is married to someone else or is in a domestic partnership with someone else;<sup>2</sup>
- The two persons are not related by blood in a way that would prevent them from being married to each other in California;
- Both persons are at least 18 years of age;
- Both persons are capable of consenting to the domestic partnership;

#### *And either:*

- Both persons are members of the same sex; or
- One or both of the persons are over the age of 62.

### *How do we register as domestic partners with the State of California?*

To register, download the declaration of domestic partnership form at <http://www.ss.ca.gov/dpregistry/> or pick up the domestic partnership form at any local county registrar's office or at any office of the California Secretary of State.

Both parties must sign the form in the presence of a notary and have the form notarized. You then mail the signed, notarized form to the Secretary of State along with the \$10 fee. A list of notaries in your area can be found by consulting the yellow pages under "Notaries Public."

In signing the form, you must provide your mailing address and you must attest that:

- You meet the requirements of domestic partners, listed above;

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<sup>1</sup> "Have a common residence' means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return." Cal. Fam. Code § 297(c).

<sup>2</sup> This requirement clarifies the eligibility requirements for entering into a registered domestic partnership. Prior to AB 205, the law provided: "Neither person is married or a member of another domestic partnership." AB 205 makes absolutely clear that a person is eligible to register as a domestic partner even if he or she is also married to the same person.

In addition to clarifying this point, AB 205 eliminates the prior requirement that "[b]oth persons agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership." Fam. Code § 297(b)(2) (effective until January 1, 2005). This provision was removed because registered domestic partners will be legally responsible for each other in the same way that spouses are so there was no longer a need to state this as an eligibility requirement.

- You agree to have your case heard in a California court if you need to go to court for a separation or dissolution of your partnership, even if one or both of you no longer reside in California;<sup>3</sup> **and**
- The representations made on the form are true, correct, and contain no material omissions of fact to the best of your knowledge and belief.

Filing an intentionally and materially false Declaration of Domestic Partnership is punishable as a misdemeanor.

***If my partner and I have already registered as domestic partners with the state of California, do we need to re-register after January 1, 2005?***

No. Couples who are currently registered as domestic partners automatically will gain the new rights and responsibilities starting January 1, 2005. Thus, if you and your partner are already registered as domestic partners with the state of California, you do not need to re-register to be entitled to all of the new protections conferred by the new law. Note, however, that being registered with a county or city, or with your employer, does NOT mean that you are registered domestic partners with the State of California. You are only entitled to the legal benefits and protections of the state domestic partnership law if you have registered as domestic partners with the Secretary of State.

If you or your partner do not want to be subject to these new rights and responsibilities, you must terminate your registered domestic partnership **before January 1, 2005**. (See “Dissolving a Domestic Partnership” below).

***Do my partner and I both need to be residents of California in order to register as domestic partners with the state of California?***

No. It is not necessary for you or your partner to be legal residents of California in order to register as domestic partners with the state of California. However, while NCLR believes that other jurisdictions should respect a domestic partner registration from California, there is no guarantee this will be the case. Accordingly, even if you are registered as domestic partners in California, you should take whatever other steps are available to you to protect your relationship in your home state.

***Why is the Secretary of State sending my partner and me letters?***

All domestic partners who are currently registered with the state of California will receive three letters from the Secretary of State, sent to the mailing address on record with the state. These letters will inform registered domestic partners of the changes in the law; the increased number

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<sup>3</sup> This requirement – of consenting to the jurisdiction of California courts for purposes of a dissolution or similar proceeding – is a new requirement added by AB 205. The reason this provision was added was to ensure that couples who never did or who no longer reside in California would have at least one jurisdiction in which to dissolve their domestic partnership, should their state of domicile refuse to provide a legal forum for doing so.

of rights, benefits, and obligations of being registered domestic partners; and the new rules that will govern termination of registered domestic partnerships. The letters will also inform registered domestic partners that they must terminate their registered domestic partnerships before January 1, 2005 if they do not wish to be subject to the new rights and responsibilities conferred under AB 205.

*If couples do not affirmatively terminate their domestic partnerships, they will be subject to the new rights and responsibilities of AB 205.*

It is important that all currently registered domestic partners have their current address updated with the Secretary of State. If you have moved since you and your partner registered as domestic partner with the state of California, you should update your address on-line at: [www.ss.ca.gov/cgi-bin/dp.cgi?to=addr](http://www.ss.ca.gov/cgi-bin/dp.cgi?to=addr).

***If I am registered as a domestic partner in another state, do I need to reregister in California?***

AB 205 provides that a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership as defined in California will be recognized as a valid domestic partnership. This is true regardless of whether it is called a “domestic partnership,” “civil union,” or some other name. To ensure that you are protected, however, it may be advisable to register as domestic partners in California, even if you are already registered with another state.

***Will other states or the federal government respect our domestic partnership status?***

As noted above, there are 1,138 federal rights and protections that are given only to legally married spouses. Accordingly, the federal government will not respect your domestic partnership because domestic partnership is not marriage. This is one of the reasons that domestic partnership is not equal to marriage and does not provide adequate protection for our families.

We are hopeful that other states will honor your domestic partnership. Depending on the law of each state, however, it is possible that public and private entities in other states will not respect your domestic partnership status. In some states, where the law is extremely hostile to lesbian and gay couples, this is almost certain to be the case. For this reason, it is extremely important that you and your partner have wills, powers of attorney for health care and finance, and a written agreement about how you will divide your assets if you separate, and – for couples with children – that you obtain an adoption or parentage decree or take whatever other steps are available in your state to protect your children.

## TERMINATING A DOMESTIC PARTNERSHIP

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### ***How do I terminate my domestic partnership BEFORE January 1, 2005?***

*Until January 1, 2005*, a domestic partnership is terminated when any of the following occurs:

- one partner either sends to or gives the other partner a written notice by certified mail that he or she is terminating the partnership.
- one of the domestic partners dies.
- one of the domestic partners marries.
- the domestic partners no longer have a common residence.

Prior to January 1, 2005, upon termination of a domestic partnership, at least one former partner must file a Notice of Termination of Domestic Partnership with the Secretary of State.

Download the form from [www.ss.ca.gov/dpregistry/](http://www.ss.ca.gov/dpregistry/) and mail it by certified mail to:

**California Secretary of State**  
P.O. Box 942877  
Sacramento, California 94277-0001

If you previously registered as a domestic partner with the State of California, and are no longer in that relationship or no longer wish to take on the rights and responsibilities of being registered domestic partners, we strongly encourage you to make sure that a termination of domestic partnership form has been sent to the California Secretary of State. If you have not properly terminated your domestic partnership prior to January 1, 2005, you will have to comply with the termination requirements that go into effect on January 1, 2005 (see below).

### ***How do I terminate my domestic partnership AFTER January 1, 2005?***

If you or your partner choose to terminate your domestic partnership *after January 1, 2005*, in most cases, you will be required to go through *a court dissolution proceeding*, just as most heterosexual married couples must do to terminate their marriage.

There is a small subset of people who may be able to terminate their domestic partnership without court approval. You are only eligible to use this process if you and your partner meet *all* of the following requirements:

- You have no children together, and neither of the domestic partners, to their knowledge, is pregnant;
- You have been registered domestic partners for five years or less;
- Neither party has any interest in real property, in California or elsewhere, except in the lease of the residence where either of you lives (as long as the lease does not include an option to purchase and ends within one year from the date that you file the Notice of Termination of Domestic Partnership);

- You and your partner do not have any debts (excluding automobile debts) that either or both of you incurred after you registered as domestic partners totaling more than approximately \$6,500;
- You and your partner do not have assets (excluding automobiles and encumbrances) totaling more than approximately \$30,000 *and* you and your partner have executed an agreement that lists how the assets and/or debts will be divided;
- Both you and your partner have executed an agreement setting forth how you are going to divide your assets and the assumptions of liabilities of the community property, and have executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement;
- Both you and your partner waive any rights to support from the other;
- Both you and your partner have read and understood a brochure prepared by the Secretary of State describing the requirements for terminating a domestic partnership;

***And***

- Both you and your partner desire the domestic partnership to be terminated.

People who fulfill all of the above requirements can terminate their domestic partnership by filing the Notice of Termination of Domestic Partnership with the Secretary of State. In these circumstances, the domestic partnership shall be terminated effective six months after the filing of the termination form with the Secretary of State. The effect of termination of a domestic partnership pursuant by this means shall be the same as the entry of a judgment of dissolution of a domestic partnership.

For most people, however, as mentioned above, after January 1, 2005, it will be necessary to go through a court proceeding to terminate a registered domestic partnership. In this proceeding, the court will separate the parties' assets and make custody determinations for couples with children, as well as determine whether child and spousal support are required.

### ***How do we terminate our domestic partnership if we no longer live in California?***

As discussed above, in order to register as domestic partners in California, individuals now have to agree to allow California courts to have jurisdiction over dissolution and other proceedings regarding their domestic partner status. Therefore, you will be able to terminate your domestic partnership in California even if you do not live in California. If you are in this situation, we advise you to consult an attorney knowledgeable about LGBT issues in the state in which you reside, to determine whether you should terminate your domestic partnership where you live or whether you should return to California to do so.

## QUESTIONS REGARDING BI-NATIONAL COUPLES

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*I am a U.S. citizen, but my partner is not. Can we register as domestic partners? If we do, can I petition for my partner to become a legal resident?*

You can register as domestic partners regardless of either partner's immigration status. Unfortunately, however, doing so will **not** allow you to sponsor your partner for permanent residence. In addition, for some non-U.S. citizens, registering as a domestic partner **might** be used as evidence of an intent to stay in the U.S. on a permanent basis, which can be a problem for people who are here on non-immigrant visas.

Generally speaking, if you are not a U.S. citizen or legal permanent resident, you should consult an immigration attorney before registering as a domestic partner. For information about NCLR's free monthly immigration clinics, call Noemi Calonje at 415-392-6257 or email her at [info@nclrights.org](mailto:info@nclrights.org).



## QUESTIONS ABOUT PROPERTY, FINANCIAL ASSETS, AND DEBT

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The way that your and your domestic partner's property, financial assets, and debt will be treated by the state of California will change substantially after January 1, 2005. We strongly suggest that you seek the advice of a knowledgeable attorney if you or your partner, individually or jointly, have or acquire any assets or debts.

### ***Is it true that, after January 1, 2005, I am responsible for my partner's debts?***

After AB 205 goes into effect on January 1, 2005, you will be responsible for any debts *incurred by your partner from the date you first registered as domestic partners with the State of California*. For example, if you and your partner registered as domestic partners on February 1, 2001 and your partner incurred \$10,000 of debt between February 1, 2001 and February 1, 2005, you are equally responsible for the \$10,000 of debt -- even if you later dissolve the partnership. If your partner dies, you are fully responsible for her/his debts.<sup>4</sup>

### ***Is it true that after January 1, 2005, half of my wages are my partner's?***

Yes. After January 1, 2005, 50% of all of the wages that you earn -- or have earned from the date that you *first* registered your domestic partnership -- are considered to be your domestic partner's property.

### ***Is it true that any money that I inherit will have to be split with my partner?***

No, so long as the inheritance funds are kept separate and are not commingled with your partner's money or assets. Any money or property that you inherit or are gifted after the date you first registered as domestic partners will *not* be considered "community property" and your partner will not be entitled to any portion of it so long as it is kept separate and not commingled.

### ***What can my partner and I do if we do not want to be jointly responsible for each others' debts and assets?***

*For couples who registered prior to January 1, 2005:*

If you and your partner became registered domestic partner *prior to January 1, 2005*, you have until June 30, 2005 to draw up a *pre-registration agreement* if you would like to define how your assets are divided in a manner other than how state law would divide them. Any such pre-registration agreement must meet the requirements for a valid pre-nuptial agreement to be enforceable. If you do not enter into a pre-registration agreement by June 30, 2005, but still want to enter into an agreement that divides your assets in a manner other than how a court would divide them, you will have to enter into a *post-registration agreement*, which has more rigid requirements than a pre-registration agreement. Regardless of whether it is a pre- or post-registration agreement, it is *not* possible to create a contract that dissolves your responsibility to pay child support upon dissolution.

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<sup>4</sup> However, the California Homestead Act generally protects your family home against debts.

For the greatest chance of enforcement in the event of a dissolution, many attorneys are advising couples to meet the standards of post-registration agreements even with respect to agreements entered into prior to June 2005. While you may want to consult a “do-it-yourself” book, such as Nolo Press’s *Prenuptial Agreements – An Overview*, to begin thinking about these issues, you should consult an attorney to finalize your agreement.

*For couples who register after January 1, 2005:*

If you and your partner register *after* January 1, 2005 and want your assets and property to be divided other than how state law automatically will divide it, any *pre*-registration agreement must be entered into before you register as domestic partners. After you register, you will have to enter into a *post*-registration agreement. In contrast to couples who already are registered domestic partners, who have until June 30, 2005 to enter into a pre-registration agreement (even though they already are registered domestic partners), couples who register on or after January 1, 2005 do not have this extra time.

### ***How does the law treat property owned by registered domestic partners?***

Registered domestic partners have the right to own real estate as community property or as community property with the right of survivorship. Both forms of ownership provide important tax benefits, including double stepped-up basis for capital gains when the survivor sells the property. Community property with the right of survivorship adds the additional benefit of passing the property to the surviving partner without having to go through probate.

### ***Do I have to share control over our community property with my partner?***

Yes. Each registered domestic partner has a right to equal management and control of community property acquired during the registered partnership.

### ***What will happen with our property and assets if we decide to dissolve our domestic partnership in the future?***

This situation will be treated the same as it is for married couples who are divorcing. A judge will oversee the dissolution to make sure that there is a fair division of property between the two domestic partners. For example, if one partner has been working while the other has been the primary care giver for children, the court will divide the total partnership assets evenly between the two partners, even if the primary care giver did not earn any income. In dividing your assets, a court will take into account the provisions of any pre-or post-registration agreements.

**WARNING:** Because the federal government currently does not recognize registered domestic partnerships for any federal purpose, and because federal tax laws give special protections to married couples that are not available to unmarried couples, it is possible that transfers of assets greater than \$11,000 between domestic partners will be taxed either as income or as a gift by the federal government, even if the transfer is part of or related to a dissolution proceeding. By way of contrast, transfers between spouses during a marriage or as part of a divorce proceeding are not taxable events.

***What will happen to our property and assets if one of us dies?***

Under current law, registered domestic partners are entitled to inherit through their domestic partner even if their domestic partner does not leave a will (this is called intestate succession). This will continue to be true after AB 205 goes into effect on January 1, 2005. If your partner dies without a will, you will be entitled to the same share to which a surviving heterosexual spouse would be.

***What should I do if my partner and I do not have time to get all of our legal agreements about finances in order before June 2005?***

One possible solution is to terminate your domestic partnership with the state, take the time that you need to organize your legal agreements, and then re-register as domestic partners with the state when you are ready. Remember, however, that if you terminate your partnership, you will not be protected by the rights provided to domestic partners until you re-register and you will have to wait six months before you can re-register. Another alternative is to enter into a post-registration agreement.

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## QUESTIONS REGARDING TAXES

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We strongly recommend that you seek the assistance of a knowledgeable attorney in order to help you determine the best way to purchase, hold, transfer, or will your property for tax purposes.
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***Will I be taxed if my partner gives me some of his or her separately owned property?***

Maybe. Even after the new law goes into effect, domestic partners will *not* be entitled to all of the same tax protections given to married couples. While most state tax laws will apply equally, federal tax laws will not. So, for example, federal tax laws allow married spouses to transfer unlimited amounts of property between themselves, without any tax penalty. However, because domestic partnerships are not marriages, these rules of unlimited transfers may not apply to transfers between registered domestic partners. Thus, a transfer of over \$11,000 in any given year may be considered a “gift” and taxed as a gift. For example, if a wife owns a beach house and transfers the title to her husband, the property is *not* taxed. However, if one domestic partner owns a beach house and transfers the title to his or her partner, the value of the property, over \$11,000 *might* be taxed as a gift by the federal government.

***Will our property be reassessed if my partner dies and leaves me the house that we had owned jointly?***

It depends. In 2003, the California Board of Equalization made several rule changes that mitigated the discriminatory tax reassessment rules with respect to transfers between registered domestic partners and other unmarried persons. One of the rule changes provides that some transfers of property between domestic partners upon the death of one of the partners is not treated as a transfer for purposes of state property reassessment. Also, even if you are not registered, you may be able to avoid reassessment if you hold the property as joint tenants. As a result, if you are in this situation, NCLR strongly suggests that you contact a knowledgeable attorney. You may also be able to get information on a specific situation from your county assessor or from the State Board of Equalization.

***How should my partner and I file our state and federal income taxes?***

Unfortunately, registered domestic partners may not file their state or federal taxes jointly. You must file both your state and federal income taxes as if you were single. Earned income will not be considered community property for purposes of filing your state income taxes.

## QUESTIONS ABOUT PARENTING AND ADOPTION

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### ***Will my partner and I both be legal parents of children born to us after January 1, 2005?***

After January 1, 2005, the law will provide that “[t]he rights and obligations of registered domestic partners with respect to a child of either of them shall be the same as those of spouses.” This means, among other things, that a child born to registered domestic partners automatically will be considered the legal child of both partners, regardless of their biological connection to the child.

Despite this automatic legal protection for children born to registered domestic partners, NCLR is strongly recommending that all couples obtain a court judgment declaring both partners to be their child’s legal parents. Having a court judgment is extremely important to ensure that the child’s legal relationship to each parent will be respected by other states and the federal government. It is also important to help eliminate the possibility of conflict and litigation over this issue in the event the parents ever separate.

There are several options for obtaining a court judgment, including completing an adoption or obtaining a judgment of parentage. It is not yet clear which will be the best option, and the answer may vary depending on the family’s particular circumstances. Therefore, it is critically important for couples who have or are going to have children to consult with an experienced family law attorney to discuss their options.

### ***What about children born before January 1, 2005?***

It is not clear to what extent AB 205 will apply to children born before January 1, 2005. We believe the law should apply to protect these children, but this issue has not yet been completely settled. To protect your children and your own rights as a parent, it is critically important that you contact a family law attorney who is familiar with LGBT parenting issues and obtain a court judgment declaring that both partners are the child’s legal parents.

### ***What is the difference between a second-parent adoption and a stepparent or domestic partner adoption?***

Domestic partner adoptions are available only to registered domestic partners; in contrast, second-parent adoptions are available to all couples, regardless of their sexual orientation, and regardless of whether they are married or in a registered domestic partnership. Both of these forms of adoption provide an opportunity for a non-biological or non-legal parent to adopt his or her partner’s biological or adoptive child. Neither requires the original, legal parent to give up any of his or her rights to the child in order for the partner to adopt. After the adoption is complete, both partners are recognized as equal parents with equal rights and responsibilities.

Both procedures lead to the same result – legal adoption and equal parenting rights and responsibilities. However, there are significant differences in the amount of time and money it costs to do these procedures. Second-parent adoptions cost more, involve more invasive home studies, and generally take more time to complete than a stepparent/domestic partner adoption.

The stepparent/domestic partner adoption process is more streamlined because it recognizes that the child already is residing in the home of the person adopting, and that that person has been chosen as the second parent by a fit, custodial parent. Stepparent/domestic partner adoptions are usually faster and less expensive than second parent adoptions. To take advantage of the more streamlined stepparent/domestic partner procedure, you must provide proof that you are registered domestic partners.

Partners who do not want to register can still use the second-parent adoption procedure. Contact an adoption attorney to find out how to proceed.

### ***What does it mean to be a legal parent?***

Legal parents have a duty to support and care for their children. They also enjoy certain rights and privileges with regard to their children. For example, they can make important decisions about their children's education, healthcare, religion, recreating, etc. When there are two legal parents, they share equally in the rights, privileges, and responsibilities both during the relationship and after a break-up. This means that after a break-up, both parents will have the right to ask a court for custody or visitation. It also means that both parents can be ordered by the court to pay child support. In California, persons who are not legal parents have virtually no legal rights or responsibilities, even if they have functioned as a child's parent for many years. For this reason, if you are a child's non-biological parent, it is extremely important to obtain a court judgment of adoption or parentage to ensure that you will have a legally protected relationship with your child.

### ***Will fertility treatment be covered by my insurance plan after January 1, 2005?***

After January 1, 2005, healthcare options for registered domestic partners should be equivalent to the options available to married spouses. However, some insurance companies have defined infertility in a way that makes it difficult for lesbians to receive coverage for fertility treatment. For example, an insurance provider may define "infertility" as having tried to get pregnant through traditional intercourse for more than 6 months without success. Therefore, lesbians may not appear to qualify for infertility treatments under the terms of their insurance policies.

NCLR believes that defining the term "infertile" in a way that excludes lesbians constitutes discrimination, and encourages anyone encountering this issue to challenge their insurance companies directly and/or to contact an attorney knowledgeable on these issues.

### ***Will my partner and I both be able to become legal parents if we use a surrogate?***

Yes, you both should be able to become the legal parents of a child born to a surrogate; however, because surrogacy is a complicated legal area, we strongly recommend that you contact a family law attorney who is familiar with LGBT issues and surrogacy before attempting to create a family in this manner.

## QUESTIONS ABOUT PUBLIC ASSISTANCE AND FEDERAL BENEFITS

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### ***What if my child, my partner or I receive public assistance?***

When AB 205 goes into affect, it is likely, although not absolutely certain, that your registered domestic partner's income will be taken into account when calculating your eligibility for some public assistance benefits, such as Medi-Cal or food stamps, just as a spouse's income is taken into account when a married person applies for benefits. Therefore, it is possible that your eligibility for some forms of public assistance will be negatively impacted by the new law. If you are or believe you may be receiving public benefits, NCLR strongly encourages you to contact the specific program administrator to find out more information. Generally speaking, people who are receiving public assistance should be very cautious about registering as domestic partners, because in many instances there is a great likelihood that you will lose your benefits.

### ***Am I entitled to any social security or other federal benefits through my partner, such as social security survivor benefits?***

No. Unfortunately, the federal government provides social security benefits only to spouses; the federal government does not recognize registered domestic partnerships. Therefore, any federal benefits that are provided to heterosexual spouses because of their marital status will not be provided to registered domestic partners. For example, a surviving domestic partner will not be entitled to social security survivor's benefits.

### ***Do I get any benefits if my registered domestic partner is a veteran?***

You will be entitled to the benefits that the state of California provides to heterosexual spouses. For example, you will be entitled to the state-conferred hiring preference for surviving partners of veterans and partners of totally disabled veterans. Further, if your partner is killed or injured while in active service, you are entitled to several state tax benefits.

## QUESTIONS ABOUT HEALTHCARE AND END OF LIFE ISSUES

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### ***Can I visit my partner in the hospital or live in senior citizen housing?***

California law provides that registered domestic partners automatically are entitled to visit their partners in the hospital. California law also provides that registered domestic partners are included in the definition of persons who are qualified to secure housing in specially designed accessible housing for senior citizens. Because it is likely that other states will continue to discriminate against registered domestic partners, you may not be entitled to these rights in other states. For this reason, NCLR encourages registered domestic partners to complete a hospital visitation authorization in the event that one or both of you are in a hospital in another state. You should carry a copy of your hospital visitation authorization with you at all times.

### ***Can I make medical decisions for my incapacitated partner?***

California law provides that registered domestic partners automatically are entitled to make medical, legal, and financial decisions for their incapacitated partners. Because it is likely that other states will continue to discriminate against registered domestic partners, you may be denied these rights in other states. For this reason, NCLR encourages registered domestic partners to complete a medical directive, and durable powers of attorney for health care and finances. You should carry copies of these documents with you at all times.

### ***Can I make decisions about my partner's remains?***

When AB 205 goes into effect, registered domestic partners automatically will be entitled to make decisions about their partner's remains. Again, however, because of the likelihood of discrimination by other states, should something happen to one of you outside of California, NCLR encourages registered domestic partners to complete an autopsy and disposition of remains authorization.

Sample forms can be accessed in NCLR's Life Lines publication, which is available at:  
<http://www.nclrights.org/publications/lifelines.htm>.



## QUESTIONS ABOUT EMPLOYMENT AND INSURANCE

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### ***Does my employer have to provide domestic partner benefits?***

Under a different law – the California Insurance Equality Act (A.B. 2208) – all health, auto, rental, disability, life, and all other insurance plans regulated by the California Department of Insurance are prohibited from treating registered domestic partners and heterosexual spouses differently. Therefore, all covered policies and plans must provide identical coverage to registered domestic partners and heterosexual spouses. So, for example, if your employer provides health benefits to the heterosexual spouses of its employees, it will also have to provide the same coverage to the registered domestic partners of its employees. The California Insurance Equality Act goes into effect on January 2, 2005 for group health insurance plans and on January 1, 2005 for other types of insurance. For more information about the California Insurance Equality Act, see [http://www.nclrights.org/publications/ab2208\\_faq\\_0904.htm](http://www.nclrights.org/publications/ab2208_faq_0904.htm). In addition, failure to provide equal insurance benefits may also constitute discrimination on the basis of sexual orientation, sex, and/or marital status in violation of California law.

### ***Will I be able to put our child on my benefits at work?***

As discussed above, both partners automatically will be considered the legal parents of a child born during a domestic partnership. Therefore, if your employer provides benefits to employees' children, your employer must provide benefits to your child, even if you were not the birth parent.

### ***Will I be able to take leave from my job to care for our child?***

Again, as discussed above, both partners automatically will be considered the legal parents of a child born during a domestic partnership. Therefore, both partners are entitled to take leave to care for their child, to the same extent that other parents are entitled to take leave. Contact an employment law attorney if you have any problems taking leave to care for a child. With regard to federal benefits, it may be more difficult to obtain benefits such as family leave without proof of a legal parental relationship, such as an adoption decree or a parentage judgment.

### ***Are my partner and I entitled to social security and other benefits provided to spouses by the federal government?***

No. As discussed above, registered domestic partners are not entitled to any of the 1,138 benefits provided to heterosexual spouses by the federal government. One of these federal benefits is the right to obtain survivor social security benefits after a heterosexual spouse has died. It also means that the federal government continues to tax the value of domestic partner benefits, while it does not tax the value of benefits to heterosexual spouses.

## MISCELLANEOUS QUESTIONS ABOUT AB 205

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### ***Do I owe my partner any duties?***

Yes. A registered domestic partner who willfully abandons and leaves her or his partner in a destitute condition or who refuses or neglects to provide her or his partner with necessary food, clothing, shelter, or medical attendance is guilty of a misdemeanor.

### ***Can I sue if someone kills or injures my partner?***

Yes. If a registered domestic partner is killed due to the negligence or wrongdoing of another person, her or his partner can bring a wrongful death suit to recover for lost financial support and companionship. A registered domestic partner can also bring a suit for the infliction of emotional distress if the partner witnesses her or his domestic partner being physically harmed by another person.

### ***Will I have to testify against my partner in a court of law?***

Not in state court. A registered domestic partner has a right not to testify against her or his partner in any state court or administrative proceeding. Because the federal government does not recognize domestic partnerships, however, this protection likely will not apply in a federal court or federal administrative proceeding.

### ***Am I allowed to visit my partner in prison?***

With regard to state prisons, you should be allowed to visit with your partner to the same extent that a heterosexual spouse can. Because the federal government does not recognize domestic partnerships, however, you may continue to face discrimination with respect to visitation rights in federal prisons.

#### **For more information about**

##### **Legal issues contact:**

National Center for Lesbian Rights  
870 Market St., Ste. 370  
San Francisco, CA 94102  
415.392.6257  
[www.nclrights.org](http://www.nclrights.org)

##### **Legislative issues contact:**

Equality California  
415.581.0005 (Northern California Office)  
310.248.3692 (Southern California Office)  
916.554.7681 (Sacramento Office)  
[www.eqca.org](http://www.eqca.org)

#### **Acknowledgements**

NCLR and EQCA would like to thank Attorneys Deb Kinney, Deborah Wald, Linda Scaparotti, and Carol Ruwart from Chairwoman Carole Migden's office for their contributions to this publication.

NCLR and EQCA also would like thank NCLR's law clerks,  
Heather Conger, Cody Hoesly, Laura Mahr, Tara O'Neill, and Jeana Zelan.